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## SECURITIES AND EXCHANGE COMMISSION

### **[Release No. 34-84826; File No. SR-NYSEArca-2018-25]Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Continued Listing and Trading of Shares of the Natixis Loomis Sayles Short Duration Income ETF**

December 14, 2018

#### **I. Introduction**

On April 16, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend the listing requirements applicable to the shares (“Shares”) of the Natixis Loomis Sayles Short Duration Income ETF (“Fund”). The proposed rule change was published for comment in the Federal Register on May 3, 2018.<sup>4</sup> On June 5, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 1, 2018.<sup>5</sup> On June 6, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On July 27,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 83122 (April 27, 2018), 83 FR 19578.

<sup>5</sup> See Securities Exchange Act Release No. 83385, 83 FR 27034 (June 11, 2018).

2018, the Commission noticed filing of Amendment No. 1 and instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> On July 27, 2018, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.<sup>8</sup> On December 6, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.<sup>9</sup> On October 22, 2018, the Commission extended the time period for Commission action to December 29, 2018.<sup>10</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

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<sup>6</sup> See Securities Exchange Act Release No. 83733, 83 FR 37831 (August 2, 2018).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> See Securities Exchange Act Release No. 84462, 83 FR 54153 (October 26, 2018). The Commission designated December 29, 2018, as the date by which the Commission shall either approve or disapprove the proposed rule change.

<sup>9</sup> In Amendment No. 2, the Exchange: (1) clarified the scope of asset-backed securities (“ABSs”) in which the Fund may invest; (2) limited the junior loans in which the Fund may invest to those that satisfy all of the criteria in Commentary .01(b) to Rule 8.600-E; (3) clarified the scope of mortgage-backed securities (“MBSs”) in which the Fund may invest; (4) eliminated as permitted investments of the Fund publicly or privately issued interests in investment pools whose underlying assets are credit default, credit-linked, interest rate, currency exchange, equity-linked or other types of swap contracts and related underlying securities or securities loan agreements; (5) established and provided support for the following diversification requirements with respect to the Fund’s investments in non-agency ABS and MBS, which collectively may comprise up to 30% of the weight of the Fund’s “Fixed Income Securities” (defined below): (a) up to 25% of such weight may be in ABS, provided that up to 5% of the weight of its Fixed Income Securities investments may be in CBOs, CLOs and CDOs, in the aggregate; (b) up to 15% of its Fixed Income Securities investments may be in MBS, including CMOs but excluding CMBS; and (c) up to 15% of its Fixed Income Securities investments may be in CMBS; and (6) made other technical, non-substantive, and conforming changes. Because Amendment No. 2 makes clarifying modifications, provides additional representations, and eliminates a permitted category of investments, it is not subject to notice and comment. All of the amendments to the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2018-25/nysearca201825.htm>.

<sup>10</sup> See Securities Exchange Act Release No. 84462, 83 FR 54153 (October 26, 2018).

## II. Description of the Proposal<sup>11</sup>

Pursuant to Commentary .01 to NYSE Arca Rule 8.600-E,<sup>12</sup> the Exchange listed and began trading the Shares on December 28, 2017. The Shares are offered by Natixis ETF Trust (“Trust”), which is registered as an open-end management investment company under the Investment Company Act of 1940 (“1940 Act”).<sup>13</sup> Natixis Advisors, L.P. (“Adviser”) is the investment adviser for the Fund. Loomis, Sayles & Company, L.P. is the Fund’s sub-adviser (“Sub-Adviser”). The Fund’s investment objective is current income consistent with preservation of capital. The Exchange filed this proposed rule change because the Fund would like to invest in assets that may not satisfy all of the requirements of Commentary .01 to NYSE Arca Rule 8.600-E, as discussed further below.

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<sup>11</sup> Additional information regarding the Fund, the Trust (defined infra), and the Shares can be found in Amendment No. 2, supra note 9, and the Registration Statement, infra note 13.

<sup>12</sup> NYSE Arca Rule 8.600-E governs the listing and trading of Managed Fund Shares on the Exchange. A “Managed Fund Share” is a security that (1) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (2) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”); and (3) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV. See NYSE Arca Rule 8.600-E(c)(1). Pursuant to Commentary .01 to NYSE Arca Rule 8.600-E, the Exchange may approve Managed Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided that components the actively managed fund’s portfolio comply with specified criteria upon initial listing and on a continual basis.

<sup>13</sup> On December 26, 2017, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-210156 and 811- 23146) (“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30654 (August 20, 2013) (File No. 812-13942-02).

A. The Fund's Contemplated Investments

While the Fund may hold any portion of its assets in cash (U.S. dollars, foreign currencies or multinational currency units) and/or cash equivalents, under normal market conditions,<sup>14</sup> the Fund will invest at least 80% of its net assets in the following:

- U.S. Government Securities, including U.S. Treasury Bills, U.S. Treasury Notes and Bonds, U.S. Treasury Floating Rate Notes, Treasury Inflation-Protected Securities, and obligations of U.S. agencies or instrumentalities (e.g., “Ginnie Maes”, “Fannie Maes” and “Freddie Macs”);
- agency and non-agency asset-backed securities (“ABS”);<sup>15</sup>
- U.S. dollar-denominated foreign securities, including emerging market securities;
- Adjustable-Rate Mortgage Securities;
- junior and senior loans;<sup>16</sup>
- bank loans, loan participations and assignments;
- agency and non-agency mortgage-backed securities (“MBS”);<sup>17</sup>
- zero coupon and pay-in-kind securities;
- corporate bonds;

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<sup>14</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

<sup>15</sup> ABSs may include collateralized bond obligations (“CBOs”), collateralized loan obligations (“CLOs”), and other collateralized debt obligations (“CDOs”).

<sup>16</sup> The Fund’s investment in junior loans is subject to all criteria in Commentary .01(b) to Rule 8.600-E, including the criteria relating to minimum original principal amount outstanding (Commentary .01(b)(1), portfolio weighting (Commentary .01(b)(2), and the numerical and other criteria in Commentary .01(b)(4). See Amendment No. 2, supra note 9, at 6, n.7.

<sup>17</sup> MBS may include collateralized mortgage obligations (“CMOs”) and commercial mortgage-backed securities (“CMBS”).

- Non-US government securities, supranational entities obligations issued by foreign governments, or international agencies and instrumentalities;
- inflation-linked and inflation-indexed securities;
- money market instruments;<sup>18</sup>
- mortgage-related securities (such as Government National Mortgage Association or Federal National Mortgage Association certificates);
- mortgage dollar rolls;
- variable and floating rate securities;
- Rule 144A securities;
- taxable municipal securities;
- step-coupon securities; and
- stripped securities (collectively, “Fixed Income Securities”).

Additionally, under normal market conditions,<sup>19</sup> the Fund may invest its remaining assets in the following:

- short sales of Fixed Income Securities;
- exchange-traded funds (“ETFs”)<sup>20</sup> and exchange-traded notes (“ETNs”);<sup>21</sup>

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<sup>18</sup> Money market instruments are short-term instruments referenced in Commentary .01 (c) to NYSE Arca Rule 8.600-E.

<sup>19</sup> See supra note 14.

<sup>20</sup> All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs. See Amendment No. 2, supra note 9, at 7, n.11.

<sup>21</sup> ETNs are Index-Linked Securities as described in NYSE Arca Rule 5.2-E(j)(6). See id. at 7, n.12.

- the following swaps: interest rate, credit default, credit default swaps index (“CDX”) , commodity, equity-linked, fixed income, credit default, credit-linked and currency exchange swaps or an index or indexes of the foregoing;
- swaptions;
- the following options: U.S. exchange-traded and over-the-counter (“OTC”) options on Fixed Income Securities, domestic and foreign equity and fixed income indices, CDX, U.S. Treasury futures contracts, interest rates and currencies;
- futures on Fixed Income Securities, domestic and foreign equity and fixed income indices, interest rates and CDX; and
- shares of non-exchange-traded open-end investment company securities.

B. The Contemplated Investments’ Possible Non-Compliance with the Generic Listing Requirements

The Exchange filed this proposed rule change to allow the Fund’s portfolio to not satisfy the two “generic” listing criteria of Commentary .01 to NYSE Arca Rule 8.600-E going forward.

First, as noted above, the Fund desires to invest in non-exchange traded investment company securities (e.g., mutual fund shares). Such shares, which could comprise at most up to 20% of the Fund’s net assets, would not satisfy the requirements of Commentary .01(a)(1) to Rule 8.600-E.<sup>22</sup> According to the Exchange, the Fund would utilize such investments to help the Fund meet its investment objective and to equitize cash in the short term.<sup>23</sup>

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<sup>22</sup> Commentary .01(a)(1) to Rule 8.600-E requires that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet certain criteria initially and on a continuing basis. Specifically: Commentary .01(a)(1)(A) requires that component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least \$75 million; Commentary .01(a)(1)(B) requires that component stocks (excluding Derivative Securities Products

Second, the Fund seeks to modify the limit on non-agency, non-government-sponsored entity (“GSE”) and privately-issued mortgage-related and other asset-backed securities. Instead, of the 20% limit in Commentary.01(b)(5),<sup>24</sup> the Exchange proposes that up to 30% of the weight of the Fixed Income Securities portion of the Fund’s portfolio consist of non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities, provided that: (1) up to 25% of such weight may be in ABS, provided that up to 5% of the weight of its Fixed Income Securities investments may be in CBOs, CLOs and CDOs, in the aggregate; (2) up to 15% of its Fixed Income Securities investments may be in MBS, including CMOs but excluding CMBS; and (3) up to 15% of its Fixed Income Securities investments may be in CMBS. The Exchange asserts that these limits would provide additional diversification to the Fund’s ABS and MBS

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and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months; Commentary .01(a)(1)(C) requires that the most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio; Commentary .01(a)(1)(D) requires that, where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks, provided that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and Commentary .01(a)(1)(E) requires that, except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

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See id.

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Commentary.01(b)(5) to Rule 8.600-E prohibits non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio from accounting (in the aggregate) for more than 20% of the weight of the fixed income portion of the portfolio.

investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation. According to the Adviser, permitting such investments: (1) would be in the best interest of the Fund's shareholders because such investments have the potential to reduce the overall risk profile of the Fund's portfolio through diversification; and (2) would afford the Fund greater flexibility to invest in the most liquid available Fixed Income Securities issues.<sup>25</sup>

The Exchange would require the Shares to satisfy all the other requirements of Rule 8.600-E.<sup>26</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to amend the listing requirements applicable to the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,<sup>28</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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<sup>25</sup> See id.

<sup>26</sup> See id. at 15.

<sup>27</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78f(b)(5).



As mentioned above, the Shares would continue to satisfy all of the generic listing criteria except for the requirements of Commentary .01(b)(5) to NYSE Arca Rule 8.600-E,<sup>29</sup> and Commentary .01(a)(1)(A) through (E) to Rule 8.600-E.

The Commission believes that permitting the Fund to invest up to 20% of its net assets in non-exchange traded investment company securities would not render the Shares susceptible to manipulation. The Commission has previously approved listing rules for other series of Managed Fund Shares that permit investments in such securities.<sup>30</sup>

With respect to the proposed 30% limit on non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities, the Commission believes that the proposed sub-limits described above, are sufficient to diversify the Fund's portfolio of such securities and mitigate manipulation concerns. The Commission notes that it recently approved a similar limit for an issue of Managed Fund Shares permitted to invest in fixed income securities.<sup>31</sup>

In support of this proposal, the Exchange has also made the following representations:

- (1) The Fund will only purchase U.S. dollar denominated non-agency ABS and MBS that are settled through DTC.<sup>32</sup>
- (2) All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the

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<sup>29</sup> Commentary .01(b)(5) to NYSE Arca Rule 8.600-E provides that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio

<sup>30</sup> See, e.g., Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR-NYSEArca-2016-79) (approving the listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

<sup>31</sup> See Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-Nasdaq-2017-128) (approving the listing and trading of shares of the Western Asset Total Return ETF).

<sup>32</sup> See Amendment No. 2, supra note 9, at 12.

applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.<sup>33</sup>

- (3) The issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)-E.<sup>34</sup>
- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.<sup>35</sup>
- (5) The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>36</sup>
- (6) For continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.<sup>37</sup>

This approval order is based on all of the Exchange's representations, including those set forth above and in the Amendment No. 2.

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<sup>33</sup> See id. at 19.

<sup>34</sup> See id.

<sup>35</sup> See id. at 17.

<sup>36</sup> See id. at 18.

<sup>37</sup> See id. at 18. See also 17 CFR 240.10A-3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act<sup>38</sup> and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-NYSEArca-2018-25), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).

